

## SMS & MMS Messaging

### 1. Contractual Item

- 1.1. The subject of these Terms and Conditions is the use of the Platform of MindMatics for the delivery of Services.
- 1.2. Definitions and interpretations of terms used throughout this agreement are specified in Schedule 1.
- 1.3. Technical features for the Services are specified in Schedule 2.

### 2. MindMatics' Obligations

- 2.1. MindMatics shall for the duration of this Agreement grant the Contract Partner access to the Platform solely for the purpose of providing the Services in accordance with the provisions of this Agreement.
- 2.2. MindMatics are responsible for the provision of Services in accordance with the current Feature List as defined in Schedule 2, and in accordance with the Product that the Contract Partner has ordered
- 2.3. MindMatics shall for the duration of this Agreement use its reasonable endeavours to provide and maintain the Service 24 hours in every day on every day of the year. MindMatics does not warrant that the Platform, any mobile telecommunications network or the Link will be fault free or free of interruptions. MindMatics reserves the right from time to time to improve or alter the Platform as it deems appropriate provided such changes do not substantially adversely change the nature of the Platform. Further MindMatics reserves the right to suspend the operation of the Platform for the purposes of remedial or preventative maintenance or improvement of the Platform provided that MindMatics shall use its reasonable endeavours to keep such suspension to a minimum and shall endeavour to give at least 24 hours' prior notice (other than in the case of emergency).
- 2.4. The Contract Partner acknowledges and agrees that dispatching or receiving of Messages may depend on factors beyond MindMatics' control including but not limited to factors affecting the operation of any mobile telecommunications network and the Link. MindMatics is not obliged to provide Services where such factors prevent it.
- 2.5. MindMatics shall be under no obligation to monitor the content of the Messages. For the avoidance of doubt, MindMatics may monitor compliance of Services with this Agreement but such monitoring shall not be construed as acceptance by MindMatics of any responsibility for the content of the Messages.
- 2.6. In the event of MindMatics receiving Messages on behalf of the Contract Partner, MindMatics responsibility is solely to ensure that MindMatics' receiving equipment is active and to forward received Message data to the Contract Partner in a mutually agreed format. MindMatics is not responsible for any data delayed or lost due to factors beyond MindMatics' control as defined in clause 2.4.
- 2.7. MindMatics shall use its reasonable endeavours to keep disruptions to the Services to a minimum and shall endeavour to give at least 24 hours' prior notice to any such known disruption (other than in the case of emergency). The restriction or temporary termination of the service supply does not entitle the contract partner to any liability or compensation claims against MindMatics. MindMatics sole responsibility will be to inform the Contract Partner of any malfunctions as soon as reasonably possible.
- 2.8. MindMatics is authorised to use expert external advisers and institutions for performing the Services.
- 2.9. MindMatics offers technical support Monday to Friday between 9am and 5 pm GMT. Please contact your Account Manager or call +44 (0)20 7418 5550

Excluded are bank holidays in the UK

The service level provided will depend on the Product ordered by the Contract Partner as defined in Schedule 2.

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### 3. The Contract Partner's Obligations

- 3.1. The Contract Partner shall be responsible, at its sole cost, for connecting to MindMatics by installing a Link prior to the Access Date. All Messages transmitted between the Customer and MindMatics shall be transmitted across the Link in the format specified from time to time by MindMatics.
- 3.2. In the event the Contract Partner supplies message receiving services or equipment such as SIM cards, short codes or modems, it is the Contract Partner's sole responsibility to ensure that such equipment is activated and fully functional for the purpose of the Services. MindMatics sole responsibility will be to inform the Contract Partner of any malfunctions as soon as reasonably possible.
- 3.3. The Contract Partner is responsible for using the Services in accordance with MindMatics' technical specifications as defined in the current version of MindMatics' whitepapers.
- 3.4. The Contract Partner is solely responsible for the content of dispatched Messages. The Contract Partner shall use the Services in accordance with all relevant laws and data protection agreements. Specifically for the UK, this refers i.a. to the Data Protection Act (1998), The Telecommunications Act and ICSTIS regulations. The Contract Partner commits himself not to pass on information or messages via the Services that concern the following ranges of topics:

Information that

- Is illegal,
- Ignores or offends the fundamental rights of the UK, Germany or the country of the Mobile User
- Has sexual, racist or discriminating references
- Contains advertisements, unless the Mobile User has agreed to receive them
- Infringes any third-party intellectual property rights
- Is of such a nature that is likely to bring MindMatics or the Network Operators into disrepute

MindMatics shall be entitled to determine, in its sole discretion, whether any Message falls within the description set out above and such determination shall be binding on the Contract Partner. MindMatics has the right to immediately suspend provision of Services if MindMatics determines that the Contract Partner is in breach of this clause.

- 3.5. The Contract Partner shall ensure that, before any Message is dispatched or made available by the Contract Partner, all such rights, authorisations, licences, consents and permissions have been obtained or granted and all such requirements of law or of any Regulatory Body have been complied with as may be necessary and sufficient to enable lawful and proper access to the Services and for all Messages to be transmitted lawfully to and from the Mobile Users.
- 3.6. The Contract Partner shall provide to MindMatics such assistance and/or information as MindMatics may from time to time reasonably require in order to comply with all or any requirements and conditions at any time and from time to time imposed on it by law, by any Regulatory Body, which are or may be applicable to or affect any Message and/or the Services.
- 3.7. The Contract Partner shall ensure that no person other than the Contract Partner uses or gains access, directly or indirectly, at any time to the Services, but, for the avoidance of doubt, nothing in this Clause 3.7 shall prevent the Contract Partner using the Services to send or receive Messages on behalf of third parties with whom they have a contractual agreement.
- 3.8. The Contract Partner is responsible for ensuring that a designated Contact is reachable at all times in order for MindMatics to fulfil its contractual duties.

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### 4. Remuneration

- 4.1. The prices for the Services are to be taken from MindMatics' current price list or Order Form and relate to the Product chosen by the Contract Partner from our Features List in Schedule 2. All prices are shown as net. VAT will be added at the current rate if applicable.
- 4.2. The amount of Messages dispatched or received by MindMatics on behalf of the Contract Partner forms the basis for accounting and invoicing. The Contract Partner has the right to appoint an independent auditor at their own expense to verify that the invoiced amounts are correct.
- 4.3. Provision of Services is based on pre-payment for Message Dispatch. Upon receipt of pre-payment, MindMatics will credit the Contract Partner's account with the corresponding Message credits. It is the Contract Partner's responsibility to ensure they have sufficient credits to continue operation of the Services.
- 4.4. Prices are volume-based and subject to price stability as defined in the Features List in Schedule 2. In the event the Contract Partner has not used up the full amount of prepaid Messages in any given month, the remaining prepaid credit will be carried over to the following month subject to clause 4.5.
- 4.5. Pre-paid Messages are valid for 12 months. The Contract Partner is entitled to a refund of unused pre-paid Message volumes only if MindMatics is unable to deliver the Service as defined in this Agreement.
- 4.6. In the event of price increases, MindMatics will notify the assigned Contact of the Contract Partner. The Contract Partner can choose to either have any outstanding credit recalculated into the equivalent number of Message credits at the new price, or have the outstanding credit refunded. If the Contract Partner does not inform MindMatics of their decision within the time frames indicated in Price Stability in Schedule 2, MindMatics will recalculate the equivalent number of Message credits at the new price. Any refunds will be done within 30 days of MindMatics receiving written confirmation from the Contract Partner.
- 4.7. In the event of post-payment being agreed for any service or part of service, payment is due without any deduction 7 days after invoice date. MindMatics is entitled to charge the UK statutory interest rate as of the date upon which the Contract Partner is in arrears.
- 4.8. The Contract Partner may set off any claims against MindMatics only if the Contract Partner's claims are undisputed or have been finally and unambiguously established.

### 5. Liability

- 5.1. Notwithstanding any other provision of this Agreement, neither Party excludes or limits liability for death or personal injury resulting from its negligence or breach of its obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.
- 5.2. Subject to Clause 5.1, under no circumstances shall MindMatics be liable to the Contract Partner for any interrupted communications, or loss of profits, data, revenue, business, contracts, anticipated savings, use or goodwill or any indirect, contingent or consequential losses whether arising out of breach of contract, negligence or other tort.
- 5.3. Any and all claims against either Party shall be time-barred in 12 months. This does not apply to claims in tort or due to intentional acts.
- 5.4. In the event that liability is excluded, the same shall also apply to any personal liability of employees, representatives, subcontractors and other staff.
- 5.5. MindMatics' liability for restoring data is additionally limited in that it shall be liable only if the Contract Partner has ensured that the data can be reconstructed with reasonable efforts and cost from data material which is kept in machine-readable form. The above liability provisions apply to both contractual and non-contractual claims.

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- 5.6. In any event, the maximum liability under the items 5.1-5.5 is limited to the lowest of either the total amount paid or payable by the Contract Partner to MindMatics under this agreement for a period of three (3) months or £20,000.
- 5.7. MindMatics is not liable for any failure on the side of the GSM network carriers and any resulting damage. Eventual claims to which MindMatics is entitled in such a case will be forwarded to the Contract Partner in advance. Regarding the GSM network, MindMatics is only liable for the correct selection of GSM Carriers.
- 5.8. The Contract Partner commits himself to release MindMatics from all damages, losses and expenditures (including legal advice fees and expenses) that MindMatics has to carry out communally or individually in the framework of legal proceedings or because of claimed asserts, which were claimed against MindMatics because of the Services provided on behalf of the Contract Partner including its contents. The Contract Partner's obligation to indemnify MindMatics is subject to the following preconditions:
  - The Contract Partner's obligation to indemnify is limited to third party claims,
  - MindMatics notifies the Contract Partner of any such claims without delay,
  - The Contract Partner has the sole control over any proceedings, negotiations etc.
  - MindMatics gives the Contract Partner reasonable assistance in such cases.

## 6. Force Majeure

- 6.1. Neither Party shall be deemed to be in breach of this Agreement nor otherwise liable to the other by reason of any delay in performance or non-performance of any of its obligations under this Agreement to the extent that such delay or non-performance is due to any Force Majeure of which it has notified the other Party. It is agreed that the Contract Partner's inability to use the Platform or the Services to any Mobile Users by reason of failure of any equipment or services not provided by MindMatics (including without limitation the Link) shall not relieve it from payment of MindMatics' charges.
- 6.2. If the Force Majeure in question prevails for a continuous period in excess of 14 days, either Party may by notice in writing to the other, terminate this Agreement.
- 6.3. In this Clause 5, the term "Force Majeure" shall mean any Act of God, war, strike, lockout, fire, flood, or other natural disaster, governmental act (whether local or national), industrial action, vandalism, non-availability of any part of any mobile telecommunications network for any reason, failure or shortage of power or fuel or other supplies, radio interference, atmospheric conditions, inclement weather conditions, acts or omission of any other mobile telecommunications operators or third parties or any other cause beyond the reasonable control of the Party affected.

## 7. Duration

- 7.1. This Agreement shall commence on the date the Contract Partner has signed an Order Form from MindMatics that is subject to MindMatics' Terms & Conditions. This Agreement shall continue in force until terminated pursuant to Clause 8 of this Agreement, unless otherwise agreed by both Parties in writing.

## 8. Termination

- 8.1. Each contracting party has the right to terminate this Agreement without previous notice if the respective other partner commits a substantial breach of contract and if the contract-breaching behaviour is not eliminated within 14 days. This period of 14 days starts with the reception of a written notice containing the threat of terminating the contract.

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- 8.2. MindMatics obtains the right of an immediate extraordinary termination if the Contract Partner has been in arrears for more than 60 days; if the Contract Partner becomes insolvent, has a receiver, manager, administrator or administrative receiver appointed over all or part of its assets, enters into a composition generally with its creditors or suffers any similar event in any jurisdiction; or if the Contract Partner is violating any laws or other federal obligations.
- 8.3. On termination of this Agreement, howsoever caused, both parties shall promptly, and in any event within 60 days following termination, return to the other party all other property and Confidential Information belonging to the other, in all forms partial and complete, in all types of media and computer memory, and whether or not merged with other materials, or to the extent such return is not reasonably practical, will destroy the foregoing and provide the originating party with a certificate by an officer of the company certifying destruction.
- 8.4. Notwithstanding termination, howsoever caused, the following clauses shall survive termination: Clauses 4, 5, 10.

### 9. Changes to conditions offered

- 9.1. MindMatics is entitled to change contractual terms, if this is necessary due to changes in technical conditions to provide the service or due to changes in legal obligations, especially through courts, laws or other institutions. Price changes are also possible as defined in the Features List in Schedule 2. Each change has to be communicated in written format, by post or email, by MindMatics to the designated Contact of the Contract Partner

### 10. Data Security and Confidentiality

- 10.1. The Parties undertake to treat all information and data that they obtain from the other Party in connection with the implementation of this Agreement as confidential and not to make such data available to third parties. This obligation shall survive even after this Agreement has ended.

The confidentiality obligation will prohibit the use of the confidential information of the other party for other purposes than for achieving the purpose of agreement.

The confidentiality obligation will not apply to information which, as shown by the Disclosee:

- at the time of disclosure is in the public domain or after disclosure becomes part of the public domain by publication or otherwise through no breach of the confidentiality obligations by the Disclosee, or
  - was developed by the Disclosee and was properly in the possession of the Disclosee prior to the time of disclosure hereunder, or
  - was rightfully received by the Disclosee prior to or after the time of disclosure hereunder from a third person or entity imposing no obligation of confidentiality, or
  - was subsequently independently developed by the Disclosee without reference to any confidential information of the disclosing party.
- 10.2. The confidentiality obligation does not preclude either Party disclosing any information to its affiliates, financial, legal or other consultants and third parties possibly working for that Party from time to time, who need to know such information for the purposes of the agreement and who have, prior to such disclosure, entered into an appropriate confidentiality agreement.
  - 10.3. The confidentiality obligations should not preclude either Party disclosing any information in response to a valid order by a court or any other governmental authority or otherwise required by applicable securities or other laws or necessary to establish right hereunder.
  - 10.4. The Parties may pass confidential information of the respective other party on to its Representatives provided they need the information in order to achieve the purpose of this Agreement.

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- 10.5. All and any information regarding the Contract Partner's end-users and customers, including but not limited to information regarding their use of the services and products provided by the Contract Partner shall be owned solely by the Contract Partner. Such information will be considered confidential information and MindMatics shall use such information solely for and on behalf of the Contract Partner. MindMatics shall not have the right to disclose such information to third parties or use the same for any other purpose than for providing Services to the Contract Partner hereunder.
- 10.6. Notwithstanding section 5, the Parties shall each be liable for any breach of this Agreement by their Representatives, affiliated undertakings and their Representatives. They each undertake to take, at their own cost, every measure necessary in order to restrain their Representatives, affiliated undertakings and their Representatives from forwarding or making use of confidential information in breach of the above paragraph.
- 10.7. The Contract Partner is hereby informed pursuant to the UK data protection act of 1998 as well as paragraph 33(1) of the German Data Protection Act, that MindMatics stores its data in machine-readable form and processes it by computer for contractual purposes. In the event that MindMatics uses third parties to render its services, MindMatics is entitled to forward the data to the extent necessary. The customer expressly agrees to such storage, processing and forwarding.

## 11. Final Clauses

- 11.1. The failure by either Party to exercise or enforce any right conferred by these Terms & Conditions shall not be deemed to be a waiver of any such right nor operate as to bar the exercise or enforcement thereof or of any other right on any other occasion.
- 11.2. If at any time any one or more of the provisions hereof is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.
- 11.3. MindMatics is entitled to transfer the performance of its obligations to a third party either in whole or in part.
- 11.4. The Contract Partner shall not at any time assign, transfer or sub-contract this Agreement, the licences contained herein, or any part thereof, to any other person without the written consent of MindMatics.
- 11.5. This Agreement shall be governed by, construed and shall take effect in accordance with the laws of England and both parties hereby submit to the exclusive jurisdiction of the English Courts.
- 11.6. MindMatics reserves the right from time to time, by notice in writing by post or email, to issue to the Contract Partners variations to this Agreement, which shall be binding on the Contract Partner unless the Contract Partner notifies MindMatics to the contrary in writing within 7 (seven) days of receipt of the notice.

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The following Schedules are part of the Terms & Conditions:

**Schedule 1:** Definitions

**Schedule 2:** Features List

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### Schedule 1: Definitions

“**Access Date**” means the date on which the Services are ready to start from.

“**Agreement**” means these terms and conditions and the Schedules hereto (as varied from time to time in accordance with the terms of this Agreement), and comes into force with a signed copy of a valid MindMatics’ Order Form

“**Contract Partner**” means any company ordering Message transmission from MindMatics under a prepay or postpay agreement and signing a valid Order Form.

“**Connecting Network Operator**” means a Network Operator or business partner with whom MindMatics has a commercial agreement and a tested technical connection suitable for the delivery of Messages. In the event a Message is destined for a recipient not belonging to the Connecting Network Operator, the Connecting Network Operator delivers the Message to the appropriate Network Operator for final delivery to a Mobile User.

“**Contact**” means a person designated by the Contract Partner that is reachable at all times in order for MindMatics to fulfil its contractual duties.

“**Disclosee**” means the recipient of confidential information from the other Party

“**Link**” means the link from the Contract Partner to the point of connection with MindMatics’ Platform that is compatible with MindMatics’ whitepapers, across which the Contract Partner provides (and, if applicable, receives) Messages from MindMatics.

“**Message**” means either an SMS (see “SMS Messages”) or MMS (see “MMS Messages”)

“**MindMatics**” refers to MindMatics Limited, Company Number 4085214, whose address is The MacMillan Building, 4 Crinan Street, London, N1 9XW

“**MMS Messages**” means images, videos, audio clips and text messages using the Multimedia Messaging Service, also referred to as “**MMS**”

“**Mobile User**” means an individual with a mobile phone connected by a Network Operator on prepaid or subscription basis

“**Network Operator**” means any firm operating a GSM-based mobile telephony network, offering mobile telephony services to its subscriber base.

“**Order Form**” means a document provided by MindMatics detailing pricing, volume and Product details that is signed off by the Contract Partner.

“**Party**” means Contract Partner or MindMatics individually.

“**Parties**” means Contract Partner or MindMatics collectively.

“**Platform**” means the facility made available from time to time by MindMatics for the purpose of providing the Services.

“**Product**” means features and services by level according to the Features List defined in Schedule 2

“**Representatives**” means a Party’s corporate organs, managers, employees, authorized representatives or advisers

“**Services**” means dispatching or receiving of Messages according to the GSM standard

“**SMS Messages**” means alphanumeric or binary messages using the Short Message Service as defined in the GSM standard, also referred to as “**SMS**”

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**“Message Dispatching”** means any services and associated technology infrastructure where MindMatics sends Messages on behalf of the Contract Partner to mobile numbers provided by the Contract Partner. MindMatics sends SMS over connected network operators to the Network Operator used by the Mobile User. The Network Operator then transfers the Message to the Mobile User's mobile handset. By transmitting Messages to the Connecting Network operator MindMatics has completed its contractual duties. Also referred to as **“Message Dispatch”**

**“Message Receiving”** means any services and associated technology infrastructure where MindMatics receives messages from mobile handsets on behalf of the Contract Partner. MindMatics receives Messages addressed to MindMatics' inbound numbers and transfers received data to the Contract Partner. If required, MindMatics also fulfils the data mining and handling of received SMS for the Contract Partner. Also referred to as **“Message Receipt”**

**“Message (MO)”** means a Message originated from a Mobile User's mobile phone (Mobile Originated)

**“Message (MT)”** means a Message terminated on a Mobile User's mobile phone (Mobile Terminated)

## SMS &amp; MMS Messaging

## Terms &amp; Conditions

## Schedule 2: Feature list for SMS (MT)

FEATURES	PRODUCT		
	STANDARD	BUSINESS	FIRST CLASS
Typical Usage	Bulk non-time critical mobile communications	Low value content & Branded marketing	Delivery of Paid-For Content, and time-critical SMS alerts
Products Scope	Operator Specific	Operator Specific	Global
Minimum Volume Requirements	No minimum volume	No minimum volume	No minimum volume
Sender Ids	Not guaranteed*	Alphanumeric originators to 11 characters	Alphanumeric originators to 11 characters
Reply Paths	Not guaranteed	16 digit international format and shortcode replies included	16 digit international format and shortcode replies included
Feature Availability	Text Only: binaries not guaranteed	Text & Binary guaranteed	Complete Feature Support**
Feature Consistency	Operator Specific Features	Operator Specific Features	Fully Consistent Globally
Message Status Monitoring	No delivery notifications	Delivery notifications if requested	Delivery notifications if requested
Throughput	No Commitment Estimated 5/10 per sec	No Commitment Estimated 5/10 per sec	Defined by Product Package
Service Level Agreement	As per T's & C's	As per T's & C's	As per T's & C's
Available Service Interface	HTTP, UCP, Online interface (upload tool), Email2SMS single & batch (SMTP)	HTTP, UCP, Online interface (upload tool), Email2SMS single & batch (SMTP)	HTTP, UCP, Online interface (upload tool), Email2SMS single & batch (SMTP)
Retry Management	Not guaranteed	Guaranteed retry by network	Guaranteed retry by network
Customer Support Options	As per T's & C's	As per T's & C's	As per T's & C's
Pricing	Operator Specific pricing	Operator Specific pricing	Global Pricing (Operator / country exceptions > 250k / mth)
Termination to Ported Numbers	Not guaranteed	Not guaranteed	Guaranteed
Price Stability	24 hour notice of changes or 1 working day, whichever is the longest	5 days notice of changes	30 days notice of changes

\* Operator specific, and subject to change

\*\* Please contact us for full details